

## § 30.9

(g) *Foreign country* means a country included in the list of countries that discriminate against U.S. firms published by the U.S.T.R.

### **§ 30.9 Citizenship: Direct or indirect control.**

A contractor, subcontractor, or person providing a service shall be considered to be a citizen or national of a foreign country, or controlled directly or indirectly by citizens or nationals of a foreign country, within the meaning of this part.

(a) If 50 percent or more of the contractor or subcontractor is owned by one or more citizens or nationals of the foreign country;

(b) If the title to 50 percent or more of the stock of the contractor or subcontractor is held subject to trust or fiduciary obligation in favor of one or more citizens or nationals of the foreign country;

(c) If 50 percent or more of the voting power in the contractor or subcontractor is vested in or exercisable on behalf of one or more citizens or nationals of the foreign country;

(d) In the case of a partnership, if any general partner is a citizen or national of the foreign country;

(e) In the case of a corporation, if the number of its directors necessary to constitute a quorum are citizens of the foreign country or the corporation is organized under the laws of the foreign country or any subdivision, territory, or possession thereof; or

(f) In the case of a contractor or subcontractor that is a joint venture, if any participant meets any of the criteria in paragraphs (a) through (e) of this section.

### **§ 30.11 Use of solicitation provisions and contract clauses.**

(a) Unless the President or the Secretary waives the restrictions imposed by section 109(a) of the Continuing Resolution in accordance with § 30.17 of this part, the contracting officer shall insert a clause similar to the clause at § 30.15, Restrictions on Federal Public Works Projects, in contractions and solicitations, if—

(1) The contract is awarded on or after December 22, 1987, and before October 1, 1988; and

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(2) The contract obligates funds appropriated for use in FY 1988 by the Continuing Resolution or any other law; and

(3) The contract is for the acquisition of construction, alteration and repair, architectural, engineering, or other services directly related to the preparation for, or performance of, construction, alteration, and repair for Federal public works projects inside the United States, U.S. territories, or U.S. possessions.

(b) Unless the Secretary waives the restrictions imposed by section 115 of the Airport Safety Act in accordance with § 30.17 of this part, the contracting officer shall insert a clause similar to the clause at § 30.15, Restrictions on Federal Public Works Projects, in contracts and solicitations relating to any project for which funds, including grant funds, are made available by that Act, whether or not the contract is awarded during fiscal year 1988.

(c) Any contract already awarded that should have contained the clause prescribed in paragraph (a) or (b) of this section, but did not, shall be modified to include the clause. In the event that the contracting officer is unable to modify such contract, the contract shall be canceled at no cost to the Government, unless a waiver is granted in accordance with § 30.17 of this part.

(d) Contracting officers shall insert a provision similar to the solicitation provision at § 30.13 of this part, Restrictions on Public Works Projects—Certification, in solicitations containing the clause at § 30.15 of this part, Restrictions on Federal Public Works Projects.

(e) Any solicitation issued before December 22, 1987, that will result in the award of a contract covered by paragraph (a) of this section after December 22, 1987, and before October 1, 1988, and that should have contained a provision similar to that § 30.13 of this part, but did not, shall be amended to include the provision if the contract has not yet been awarded.

### **§ 30.13 Restrictions on Federal public works projects: Certification.**

As prescribed in § 30.11(c) of this part, the contracting officer shall insert the following provision in solicitations

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containing the clause at § 30.15, *Restrictions on Federal Public Works Projects*:

### RESTRICTIONS ON FEDERAL PUBLIC WORKS PROJECTS—CERTIFICATION

(a) *Definitions.* The definitions pertaining to this provision are those that are set forth in 49 CFR 30.7-30.9.

(b) *Certification.* By signing this solicitation, the Offeror certifies that with respect to this solicitation, and any resultant contract, the Offeror—

(1) Is ☐ is not ☐ a contractor of a foreign country included on the list of countries that discriminated against U.S. firms published by the Office of the United States Trade Representative (U.S.T.R.);

(2) Has ☐ has not ☐ entered into any contract or subcontract with a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.; and

(3) Has ☐ has not ☐ entered into any subcontract for any product to be used on the Federal public works project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

(c) *Applicability of 18 U.S.C. 1001.* This certification in this solicitation provision concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

(d) *Notice.* The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(e) *Restrictions on contract award.* No contract will be awarded to an offeror (1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or (2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such U.S.T.R. list or (3) who incorporates in the public works project any product of a foreign country on such U.S.T.R. list; unless a waiver to these restrictions is granted by the President of the United States or the Secretary of Transportation. (Notice of the granting of a waiver will be published in the FEDERAL REGISTER.)

(f) *System.* Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (b) of this provision. The knowledge and information of an Offeror is not required to exceed that which is nor-

mally possessed by a prudent person in the ordinary course of business dealings.

(g) *Subcontracts.* The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this solicitation provision, including this paragraph (g), in each solicitation issued under such contract.

[End of Provision]

### § 30.15 Restrictions on Federal public works projects.

The contracting officer shall insert the following clause in solicitations and contracts as prescribed at § 30.11(a) through (b) of this part:

#### RESTRICTIONS ON FEDERAL PUBLIC WORKS PROJECTS

(a) *Definitions.* The definitions pertaining to this clause are those that are set forth in 49 CFR 30.7—30.9

(b) *General.* This clause implements the procurement provisions contained in the Continuing Resolution on the Fiscal Year 1988 Budget, Public Law No. 100-202, and the Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law No. 100-223.

(c) *Restrictions.* The Contractor shall not knowingly enter into any subcontract under this contract: (1) With a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the United States Trade Representative (U.S.T.R.); or (2) for the supply of any product for use on the Federal Public works project under this contract that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

(d) *Certification.* The Contractor may rely upon the certification of a prospective subcontractor that it is not a subcontractor of a foreign country included on the list of countries that discriminates against U.S. firms published by the U.S.T.R. and that products supplied by such subcontractor for use on the Federal public works project under this contract are not products of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R., unless the contractor has knowledge that the certification is erroneous.

(e) *Erroneous certification.* The certification in paragraph (b) of the provision entitled "Restriction on Federal Public Works Projects—Certification," is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Contractor knowingly